

DEPARTMENT OF THE ARMY GENERAL PERMIT CENAP-OP-R-DELAWARE-SPGP-20

PERMITTEE AND PERMIT NUMBER:

CENAP-OP-R-

ISSUING OFFICE:

Department of the Army
U.S. Army Corps of Engineers, Philadelphia District
Wanamaker Building - 100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

PROJECT DESCRIPTION: existing and proposed piers, docks, decks, mooring piles, boat lifts, timber breakwaters and the replacement of existing bulkheads within eighteen (18) inches of existing serviceable bulkhead structures.

PROJECT LOCATION: navigable waters of the United States located within the State of Delaware.

PERMIT CONDITIONS:

General Conditions:

1. The time limit for completing the work authorized by this general permit ends on December 31, 2004. However, Special Condition Number 25 specifically addresses those circumstances where this time limit may be extended beyond December 2004.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
4. If a conditioned water quality certification has been issued for your project, you must comply with conditions specified in the certification as special conditions to this permit.
5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. That in order for work and structures to be approved by this general permit the work and structures must be reviewed and receive the approval(s) of the Delaware Department of Natural Resources and Environmental Control Subaqueous Lands Act (Title 7, Delaware Code, Chapter 72).
2. This general permit is not applicable to work which is authorized by the State due to failure of the State to make a permit decision within any review period mandated by State Law and/or regulation.
3. That the work and/or structures may be used for non-commercial purposes only.
4. No more than four (4) vessels shall be typically moored at any one time.
5. That the structures subject to this general permit shall not extend more than 20 percent of the width of the adjacent waterway measured from mean low water line and in no instances exceed 250 feet channelward of the mean high water line. Each application shall include a written justification for the number and length of all proposed structures.
6. That the maximum width of piers (perpendicular to the shoreline) shall be four (4) feet. The maximum width of docks (parallel to the shoreline) shall be five (5) feet except when boat lifts are constructed then the maximum width shall be six (6) feet. The maximum widths of the structures authorized by this permit shall be three (3) feet when crossing wetlands, mudflats and submerged vegetation. The minimum height of any structure, except floating docks, shall be determined by the height to width ratio of 1 to 1, with a minimum height of two (2) feet. For vegetated wetland areas, the reference point for a minimum height shall be determined by the elevation of the soil surface. For tidal, intertidal or open water, the reference point for minimum height shall be determined by the water surface elevation at mean high water.

For example, a pier 2-feet wide must be a minimum of 2-feet high, a pier 3-feet wide must be a minimum of 3-feet high, etc.. However, when a proposed pier terminates with a dock that is wider than the pier, the height of the proposed dock shall remain at a height consistent with the height of the pier.
7. That all construction equipment working on wetlands shall be supported on mats. Any wetlands disturbed during construction shall be restored to pre-project conditions.
8. That this general permit only authorizes the construction of timber breakwaters. All breakwaters must be constructed at least 18 inches above the bottom of the waterway with a minimum spacing of three (3) inches between sheathing.
9. That the structures subject to this general permit shall be constructed a minimum of 50 feet outside of any authorized navigation channel/project.
10. That this general permit is not applicable for work directly related to another activity requiring an individual Department of the Army permit application and approval by the District Engineer, Corps of Engineers.
11. That provisions of this general permit will not apply to:
 - a. Historic, cultural or archaeological sites as provided in the National Historic Preservation Act of 1966.
 - b. Sites included or eligible for inclusion in the National Registry of Natural Landmarks which are published periodically in the Federal Register.

- c. Any areas named in Acts of Congress or Presidential Proclamations as National Rivers, National Wilderness Areas, National Wildlife Refuges, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, and such areas as may be established under Federal Law for similar and related purposes, such as estuaries and marine sanctuaries
- d. Any areas designated as a component of the National Wild and Scenic River System; or any river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status.

12. The applicant must notify the District Engineer if the authorized activity may affect any historic properties listed, or determined to be eligible, or which the applicant has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of National Historic Preservation Act have been satisfied and that the activity is authorized. Furthermore, that if the permittee before or during prosecution of the work authorized encounters a historic property that has not been listed or determined eligible for listing on the National Register but which may be eligible for listing in the National Register, he shall immediately notify the District Engineer.

13. Any archeological artifacts discovered during the performance of work under the authorization of this general permit must be adequately protected and their discovery promptly reported to the District Engineer.

14. No activity authorized under this General Permit shall adversely affect any federally-listed threatened or endangered species, as identified under the Endangered Species Act of 1973, or result in the destruction or adverse modification of critical habitat of such species. If the activity may affect listed species or critical habitat, or is likely to jeopardize proposed species, or likely to result in the adverse modification of proposed critical habitat, the Corps shall initiate and complete a Section 7 consultation or conference, as appropriate, in accordance with the Endangered Species Act of 1973 prior to authorization of the activity under this General Permit.

15. That no public or private shellfish beds shall be adversely impacted or infringed upon by the authorized structures.

16. That prior to commencing any work under this general permit, the permittee should contact the various utility authorities and companies (i.e., electric, gas, water, sewage, etc.) in order to prevent personal injury and/or damage to property during construction of work.

17. That this general permit does not authorize the following:

- a. Any dredging, or any other activity not specified in this general permit.
- b. Piers, docks, boat lifts and breakwaters constructed of solid fill (earth or rock). Construction of these types of structures will require submission of a separate permit application to the Philadelphia District Engineer and issuance of an Individual Department of the Army Permit.
- c. The storage of petrochemicals, pollutants, or hazardous products on docks or piers.
- d. Any structures or work within the Chesapeake and Delaware Canal or the Lewes and Rehoboth Canal. Proposed work/structures within these waterways will require submission of a separate permit application to the Philadelphia District Engineer and issuance of an Individual Department of the Army Permit.

e. Floating docks in submerged aquatic vegetation habitat.

18. That the District Engineer retains discretionary authority to require on a case-by-case basis submission of an individual Department of the Army permit application for proposed work when it is determined that such a review would be in the public interest (i.e., potential for significant impact on environmental resources, effect on navigation, etc.).

19. All work performed under the authorization of this general permit must be consistent with approved State of Delaware Coastal Zone Management Program. The applicant must include a statement with the permit application indicating that, "The proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management (CZM) Program."

20. If it is discovered that an individual is performing work under the pretense that it is authorized by this general permit, and in fact it is not, he must specifically apply for an individual Department of the Army permit to perform the work. If the Department of the Army permit is denied, the applicant shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct the restoration of the waterway to its former condition. If the individual fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the individual.

21. That pollution of the waterway with harmful chemicals, fuels, oils, greases, bituminous material, acid, waste washings, and/or other harmful materials, shall be prevented.

22. That all work identified and authorized herein shall be consistent with the terms and conditions of this general permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit, in whole or in part, and may result in the institution of such legal proceedings as the United States Government may consider appropriate.

23. This office shall be notified at least 10 days prior to the commencement of authorized work by completing and also be notified within 10 days of the completion of the authorized work by completing and signing the enclosed Notification/Certification of Work Completion/Compliance Form (Enclosure 2). All notifications required by this condition shall be in writing and shall be transmitted to this office by registered mail. Oral notifications are not acceptable. Similar notification is required each time maintenance work is to be done under the terms of this Corps of Engineers permit.

24. Structures for Small Boats: That the permittee hereby recognizes the possibility that the structures permitted may be subject to damage by wave wash from passing vessels. The issuance of this general permit does not relieve the permittee from taking all proper steps to insure the integrity of the structures permitted and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

25. This General Permit will expire on December 31, 2004. At that time, this General Permit may be re-issued/extended. In the event that this General Permit is re-issued/extended, any activity which has been authorized under the terms and conditions of this General Permit will remain authorized until such time that the required State permit/authorization issued with the general permit expires, provided the authorized activity complies with any subsequent re-authorization or modification of this general permit.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE) (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(District Engineer) (DATE)
Frank J. Cianfrani, Chief, Regulatory Branch
for Debra M. Lewes, Lieutenant Colonel
Corps of Engineers, District Engineer

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE) (DATE)